Decision for dispute CAC-UDRP-103432

Case number	CAC-UDRP-103432
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Domain names	cx-transportexchangegroup.com, app-transportexchangegroup.com, update-transportexchangegroup.com, Account-transportexchangegroup.com, eu-transportexchangegroup.com, ap-transportexchangegroup.com, documents-transportexchangegroup.com, cxx-transportexchangegroup.com, apps-transportexchangegroup.com, Appc-transportexchangegroup.com, Verify-transportexchangegroup.com, etransportexchangegroup.com , acctransportexchangegroup.com, eutransportexchangegroup.com, extransportexchangegroup.com, address-transportexchangegroup.com, cxxtransportexchangegroup.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Transport Exchange Group Limited

Complainant representative

Organization	Waterfront Solicitors LLP

Respondent

Name	Martin Miller

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names. The Complainant has declared that there are no such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant identifies what it refers to as 'unregistered trade marks ... protectable under the English law of passing off' in respect of 'TRANSPORT EXCHANGE GROUP' and 'CX'. The treatment of these rights is discussed further, below.

In addition, the Complainant declares that its company name, under the United Kingdom system for the registration of companies, is Transport Exchange Group Ltd; this is not verified by evidence attached to the Complaint as is preferable, though as the Complainant has included the company registration number, the Panel is satisfied, on the basis of the publicly available register of companies maintained by the responsible authority in the United Kingdom, that this is the case.

FACTUAL BACKGROUND

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The Complainant, a limited company with its seat in Nottingham, United Kingdom, operates in the freight movement sector. Its operations are in the United Kingdom and internationally, with offices in a number of other territories including the United States and Canada. Its company name, registered under domestic law, has been 'Transport Exchange Group' since 2005 (it was previously 'Courier Exchange'), and it has operated a website and email accounts using the domain name <transportexchangegroup.com> since 2007. It operates various services that provide logistical and technological support for the movement of goods; this includes a 'Courier Exchange' service for customers which it frequently abbreviates as 'CX'.

The Respondent, an individual who has supplied an incomplete address in the United Kingdom, registered the disputed domain names on various dates between 3 February 2020 and 18 November 2020.

PARTIES CONTENTIONS

No administratively compliant response has been filed. An email to the Respondent was successfully relayed, and the Respondent did not access the online platform.

The Complainant's submissions are summarised in this decision. The Complainant submits that all the requirements of the Policy have been met and that the disputed domain names should be transferred to it.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names to be identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

The Panel must first address the question of the relevant 'trademark or service mark in which the Complainant has rights', as the Complainant has not referred to any registered trade marks. Assistance in this regard is provided by the detailed treatment of 'unregistered or common law' marks in the WIPO Jurisprudential Overview, version 3.0, para 1.3. As the Overview sets out, a Complainant must show that 'its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services'. Such assessment includes various factors; '(i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.' (This approach is frequently adopted by Panels; see for instance the recent decision in CAC Case No. 103332 Advanced ChemBlocks Inc v liangliang wang).

The Complainant has provided summary information regarding the volume of activity, examples of advertising, and factual information regarding the duration of use; it also notes its own website and its registered company name. For the purposes of proceedings under the Policy, all of this evidence is relevant, and the Respondent has not sought to challenge any of it. The Panel therefore has no hesitation in concluding that the Complainant has rights in respect of the mark 'TRANSPORT EXCHANGE GROUP'. More caution is necessary regarding the short abbreviation 'CX', which is not dealt with in the Complainant's evidence in as much detail; this abbreviation is used in many different contexts by others, though the extent to which it is in use as an abbreviation for Courier Exchange (being also the former registered company name of the Complainant), and the consistent use of the abbreviation by the Complainant in its activities including its leading product Courier Exchange, is noted. In any event, even where the Complainant refers to the use of CX by the Respondent, this is always in conjunction with its TRANSPORT EXCHANGE GROUP mark and so no further consideration or request for further evidence is necessary for present purposes.

The Panel's finding under this heading is supported by the approach taken by other Panels, and summarised in the Jurisprudential Overview (again at para 1.3), that where a Respondent has been shown to have been targeting the complainant’s mark, this may support the complainant’s assertion that its mark has achieved significance as a source identifier. The Respondent's activity in this regard, which is discussed in more detail under the sections of this decision pertaining to paragraphs 4(a)(ii) and (iii), therefore provides further support for the subsistence of relevant rights under paragraph 4(a)(i),

The Panel therefore proceeds to the analysis of whether the disputed domain names are identical or confusingly similar to the text in which the Complainant has demonstrated rights. The TLD ".com", in each of the disputed domain names, is disregarded in light of established UDRP practice.

All of the disputed domain names contain the string 'transportexchangegroup'. Each contains additional text, with or without a hyphen (which is disregarded for the purposes of assessing similarity). Most of the additions can be understood as 'generic' or 'descriptive' (app, apps, update, account, documents, verify, address) and many of these terms could be associated with the Complainant's activities in relation to shipping and the management thereof. Others are plausible misspellings or abbreviations of the above terms (ap, acc, appc). Two contain the string EU, often used to abbreviate the European Union. Finally, some of the disputed domain names contain the term CX (or a possible misspelling, CXX), which as noted above is claimed by the Complainant as an unregistered mark and is, even if this is not the case, already used by the Complainant in conjunction with its activities and its own name.

The Panel is satisfied that all of the disputed domain names are confusingly similar for the purposes of the Policy (and in a small number of cases identical).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Respondent has not participated in these proceedings, and the Panel is unable to identify any possible rights or legitimate interests. The Complainant has declared that the Respondent is not associated with the Complainant and has not asked for or been given permission to use any of the terms associated with the Complainant.

Moreover, the Complainant has supplied compelling evidence of activity by the Respondent that seeks, intentionally, to mislead users. For instance, the Complainant states that the Respondent has published websites at some of the disputed domain names which closely resemble the Complainant's own websites. There is no evidence, whatsoever, of legitimate activity that would be relevant to the Panel's assessment under this part of the Policy (e.g. reselling); indeed, as discussed further below, the evidence available to the Panel suggests quite the opposite. The Complainant alleges that the Respondent is 'fraudulently impersonating' the Complainant, and the Respondent has through his non-participation not offered any assertion or evidence to challenge this allegation.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

As noted above, the Complainant has supplied evidence to the Panel, supporting the contention that the disputed domain names are being used in connection with fraudulent activity, and that there is a pattern of behaviour on the part of the Respondent. The Panel has reviewed all of this evidence, drawing all appropriate inferences from the Respondent's silence, and finds that it is likely that the disputed domain names are being used in support of fraudulent activity, and that the purpose of the Respondent's repeated registration of domain names of this nature was in connection with such activity. It is noted that the disputed domain names do not currently resolve to active websites (most likely on account of the suspension carried out by the Registrar), and that the Complaint includes only a selection of screenshots of some of the disputed domain names (with dates not wholly clear in some instances). The Panel is however satisfied, on the basis of the comprehensive evidence annexed to and referred to within the Complainant, that multiple 'phishing' emails have been sent using a number of the disputed domain names; these emails not only use the disputed domain name as the sender of the email, but direct the recipient to a website at the same disputed domain name or another of the disputed domain names, typically seeking to capture usernames, passwords, and/or other data.

The Complainant has also submitted that the Respondent has supplied false contact details. The Panel accepts this, noting

that the street name does not appear to exist, and that the postal code does not match the city or county.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

After the dispute was assigned to this Panel, the Panel requested that the Provider make further contact with the Registrar in order to obtain Registrar Verification of two of the disputed domain names (<address-transportexchangegroup.com> and <cxxtransportexchangegroup.com>), which did not form part of the original Complaint comprising 15 disputed domain names (and so the initial Registrar Verification) but were added by the Complainant to the Amended Complaint (that is, before the formal commencement of proceedings and, in particular, notice to the Respondent). This second Registrar Verification (which now forms part of the record) confirmed that the Respondent in the additional 2 disputed domain names is the same Respondent as in the initial 15. For this reason, and because the Amended Complaint, as notified to the Respondent, addressed all 17 disputed domain names, it was determined that there was no requirement to give further notice to the parties.

It is well established that Panels can accept additional domain names in a Complaint, especially where such an addition is requested before notice to the Respondent (WIPO Jurisprudential Overview, version 3.0, para 4.12.1). The Panel accepts the appropriateness of addressing all 17 disputed domain names in the present proceedings.

PRINCIPAL REASONS FOR THE DECISION

The reasons for the decision are as set out above. In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names. On the other hand, it has been established that the Complainant has rights in respect of the unregistered trade mark TRANSPORT EXCHANGE GROUP and (possibly to a lesser extent) CX, and that all of the disputed domain names registered by the Respondent are (at least) confusingly similar to the former mark or the two marks taken together, with the only material differences being the addition of various descriptive or generic terms, or slight misspellings of such terms. In light of the evidence presented regarding the use of the disputed domain names for fraudulent activity, and the legal findings as set out above, the Panel can find that the disputed domain names were registered and are being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the UDRP have therefore been met, and the Panel orders that each of the disputed domain names be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **CX-TRANSPORTEXCHANGEGROUP.COM**: Transferred
2. **APP-TRANSPORTEXCHANGEGROUP.COM**: Transferred
3. **UPDATE-TRANSPORTEXCHANGEGROUP.COM**: Transferred
4. **ACCOUNT-TRANSPORTEXCHANGEGROUP.COM**: Transferred
5. **EU-TRANSPORTEXCHANGEGROUP.COM**: Transferred
6. **AP-TRANSPORTEXCHANGEGROUP.COM**: Transferred
7. **DOCUMENTS-TRANSPORTEXCHANGEGROUP.COM**: Transferred
8. **CXX-TRANSPORTEXCHANGEGROUP.COM**: Transferred
9. **APPS-TRANSPORTEXCHANGEGROUP.COM**: Transferred
10. **APPC-TRANSPORTEXCHANGEGROUP.COM**: Transferred
11. **VERIFY-TRANSPORTEXCHANGEGROUP.COM**: Transferred
12. **ETRANSPORTEXCHANGEGROUP.COM** : Transferred
13. **ACCTRANSPORTEXCHANGEGROUP.COM**: Transferred
14. **EUTRANSPORTEXCHANGEGROUP.COM**: Transferred
15. **EXTRANSPORTEXCHANGEGROUP.COM**: Transferred
16. **ADDRESS-TRANSPORTEXCHANGEGROUP.COM**: Transferred

17. **CXXTRANSPORTEXCHANGEGROUP.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2020-12-30

Publish the Decision